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C O N F I D E N T I A L SECTION 01 OF 04 KIEV 002900

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TAGS: [PGOV](#) [UP](#)

SUBJECT: UKRAINE: WAYS OUT OF THE POLITICAL IMPASSE: FOUR  
SCENARIOS FOR YUSHCHENKO

REF: A. KIEV 2855

[B](#). KIEV 2805

[C](#). KIEV 2888

[D](#). KIEV 2677

[E](#). KIEV 2899

Classified By: Ambassador, reason 1.4 (b,d)

[1](#). (C) Summary: With the window for a Presidential decision to disband the Rada now open and the "Anti-Crisis Coalition" nomination of Viktor Yanukovych for PM on his desk, Yushchenko and Ukraine face four scenarios: accept Yanukovych as PM; reject Yanukovych's nomination but not dissolve the Rada; dissolve the Rada and call new elections; or take no action heading into the August break. Each scenario in turn has two options: if Yushchenko accepted Yanukovych as PM, Our Ukraine (OU) could either join the Regions-led coalition in part or in whole, or remain in soft opposition; if he rejected Yanukovych's nomination, Yushchenko could try to convince Regions' financier Akhmetov to forward a new name or face a constitutional crisis; if he dissolved the Rada and called new elections, Yushchenko could face a rebellious rump Rada or successfully call Speaker Moroz/Regions' bluff, with new elections proceeding; if he took no action, Yushchenko could try to convince all parties to use the traditional August vacation time as a cooling off period or face a determined Rada taking matters into its own hands.

[2](#). (C) The absence of a Constitutional Court quorum, competing claims of constitutionality, confusing legal moves by the Rada, and fiery accusations and counter-charges by Regions and Speaker Moroz on the one side and OU and Tymoshenko bloc (BYuT) members on the other complicate the current messy situation. The decision is ultimately Yushchenko's to make, and his record is one of waiting until the last possible moment to make difficult decisions. Moroz told the evening session of the Rada July 25 that Yushchenko had agreed to participate in a roundtable on the political crisis with various political forces, academics, and journalists at Maryinsky Palace at 2 pm July 26. Yushchenko's deputy press spokesman clarified that Yushchenko has agreed to the idea of such a meeting, but at a time and place of his choosing. It appears for now Yushchenko continues to weigh seriously both an agreement with Regions and the dismissal option, with even OU insiders at a loss to predict what his final decision will be. End Summary.

Scenario 1: Accept Yanukovych as PM after cutting a deal  
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[3](#). (C) The Regions'-led coalition is placing heavy pressure on Yushchenko to forward Yanukovych's nomination back to the Rada for approval, thereby confirming Yanukovych as PM. This is the most-talked about option. There are two sub-options: parts or all of OU joins the coalition after negotiating ministerial seats; or OU remains in soft opposition to a Regions-Socialists-Communists coalition, perhaps with an

agreement on coordination.

¶4. (C) OU and Regions sources along with Rada Speaker Moroz indicated to us July 24-25 that such coalition talks continue in detail. Regions' deputy leader Makeyenko told us July 24 that Yushchenko met with three Regions deputy leaders (Kluyev, Azarov, Bohatyrova) plus Socialist faction leader Tsushko and OU leader Bezsmertny July 23. Regions financier

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Akhmetov expressed frustration to Ambassador July 24 over OU demands to increase its share of Ministries in a possible coalition. Moroz suggested to Ambassador early July 25 that current discussions center around which party would get the First Deputy PM and Ministry of Interior; current Zaporizhzhya Governor and ex-Transport Minister Yevhen Chervonenko is Yushchenko's preference for the latter job, according to OU Rada staffer Petro Pynzenyk. Media reports mid-day July 25, citing Regions sources, claim that Yushchenko had told Regions he would submit Yanukovych's nomination only if OU were given the posts of: First Deputy PM, Minister of Interior; Minister of Justice; Minister of Economy; Minister of Finance; and Minister of Industrial Policy.

¶5. (C) Yushchenko and other key OU figures like Acting FM Tarasyuk have repeatedly said publicly and privately since the July 6 emergence of the Regions-Socialist-Communist coalition that, despite French and Polish precedents, they find the idea of cohabitation, with the President's party in the parliamentary opposition, unnatural. That said, if Regions rejects OU's portfolio demands, Yushchenko/OU could still sign an agreement on coordinating activity with the anti-crisis coalition without openly joining the coalition, remaining in soft opposition. OU Leader Bezsmertny told the press July 25 this was an active possibility. OU deputy

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leader Katerynychuk favors this option as well to give OU a chance to rebuild (ref a). It is also possible that OU could break up, with some factions joining the coalition and others remaining in opposition.

¶6. (C) Acting Interior Minister Lutsenko told Ambassador July 24 of the possibility of creating a cleaner, younger, new pro-Presidential political force that could avoid the inherent weaknesses of OU and, if given time, carve out space between Regions and BYuT. Lutsenko estimated such a project, tentatively called "Force Ukraine," might need 18 months to establish itself, presuming an initial Yanukovych-led government and an eventual Presidential dismissal of the Rada to contest new elections (note: Socialist deputy leaders Mendus and Rudkovsky claimed to us July 20 that the idea for such a Lutsenko-led project was initiated by Yushchenko himself in conjunction with Acting National Security and Defense Council Secretary Horbulin, see ref A). Presidential chief of staff Rybachuk told the Ambassador that he fully supported Lutsenko's plan and would be prepared to join the new party himself.

Scenario 2: Reject Yanukovych, no dismissal, but what then?

¶7. (C) Dismissal appears for now to be less likely. Yushchenko and OU would dearly like to avoid accepting Yanukovych as PM. They cling to an all-but-extinguished hope that it might be possible to revert to a June 20 coalition deal between Regions and OU, initialed but never consummated, for Yuri Yekhanurov to serve as PM in a Regions-OU dominated government (ref b). However, OU lost its leverage July 6 when Regions paired with the Socialists instead. Akhmetov reiterated to Ambassador July 24 that Regions/coalition would not change its position on Yanukovych's nomination. It is extremely difficult to see how Yushchenko could reject Yanukovych and realize OU's hope of claiming the PM slot.

¶8. (C) Yushchenko already rejected the first nomination of Yanukovych July 11, citing a procedural technicality (the defunct "Coalition of Democratic Forces" continued to exist de jure for ten days, until July 17). The new coalition resubmitted the nomination July 18; the fifteen days the President has to put the nomination forward (in Ukrainian: "vnositi") ends August 2, though Presidential spokeswoman Herashchenko tried July 25 to push the clock back to August 5, claiming that the document submission on Yanukovych to the Presidential Secretariat was not completed until July 21.

¶9. (C) Rejecting Yanukovych's candidacy a second time, however, would enter untested constitutional ground and a likely constitutional crisis in the absence of a Constitutional Court able to rule on the matter. There literally is no precedent, since the relevant constitutional clause on the presidential nomination of the PM (Article 106, subparagraph 9) was amended December 8, 2004, went into effect only in January 2006, and does not lay out the precise procedures in any detail (ref d). Article 106 lays out Presidential powers, not obligations. After the enumeration of 31 powers, it reads: "The President of Ukraine shall not transfer his or her powers to other persons or bodies" -- suggesting, as OU has claimed, that any Rada effort to act on his behalf or his absence would be an usurpation of Presidential authority.

Scenario 3: Dismiss the Rada - crisis, or new elections?

¶10. (SBU) The second option Yushchenko appears to be considering most seriously, besides accepting Yanukovych as PM, is dismissing the Rada and calling new elections. His power to do so in the Constitution is covered in Article 90, in the event a (new) Cabinet of Ministers is not formed within sixty days of the resignation of the (old) Cabinet of Ministers. Regions/Moroz, for their part, have tried to reject the validity of this constitutional right to dismiss the Rada, based on manipulation of two legal terms in Ukrainian which are both usually translated as resignation in English (Ukrainian: "vidstavka" and "skladennya povnovazheniya," the latter technically translated as "divestiture of its powers"). To buttress their technical case, the Regions-led majority passed a resolution late July 25 to revoke its January 10 resolution (Ukrainian: "postanova") to dismiss the Yekhanurov government.

¶11. (SBU) The reason? Such a "postanova" combined with the legally-mandated resignation (Ukrainian: "skladennya novnovazhen") of the Yekhanurov government at the start of the new Rada session May 25 is considered a completed resignation ("vidstavka"), according to one reading of the Rada Rules of Procedure. Article 90 uses the word

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"vidstavka," not "skladennya povnovazhen." It is not yet clear whether this legal effort will succeed. Former MPs involved in drafting laws and the Constitution say such semantics do not carry legal weight, though strict constructionalists would likely differ; in the absence of a Constitutional Court ruling, no one can speak with legal certainty.

¶12. (SBU) Tymoshenko strongly advocates the Rada dismissal option, since she has nothing to lose and stands to gain at OU's expense. BYuT has attempted to shape perceptions/influence Yushchenko by staging a Rada walkout of her faction, threatening a mass resignation in an attempt to make the Rada inquorate, and having BYuT MP Lyashko hold a July 24 press conference in which he alleged there are tape recordings of conversations between Regions' heavyweight Kluyev and a Russian citizen in which Kluyev discusses a \$300 million payoff to Moroz to join Regions in a coalition and to support an eventual impeachment motion against Yushchenko, tentatively planned for December.

¶13. (C) One possible result of a dismissal is a full-fledged constitutional crisis fueled by a rump Rada meeting in defiance of the Presidential decision, possibly taking actions to seat Yanukovych and a new government and daring Yushchenko to use force to prevent them from doing so. The Rada laid the groundwork for a rump session July 24 by passing a resolution empowering Speaker Moroz to convene a "special session" if Yushchenko moved towards a dismissal option (ref C). Moroz followed that with a prime-time appearance on state television in which he warned of the possibility of civil conflict and bloodshed if there were to be a Presidential-parliamentary showdown, twice citing the Russia 1993 example (when then President Yeltsin used tanks to quell the rebellious Russian Duma). Notably for someone who stood on the Maidan stage as an ally of Yushchenko, Moroz did not mention the peaceful resolution of Ukraine's own 2004 crisis/Orange Revolution, instead calling any potential Yushchenko dismissal action anti-constitutional. Moroz repeated that claim to Ambassador early July 25.

¶14. (C) Another option is that Moroz/Regions' tough talk bluff would be called by a dismissal; rather than choosing confrontation, Regions would contest new elections, confident in its ability to secure an outright majority and form the next government alone. Moroz told Ambassador July 25 that Regions could secure 50 percent in the next election, with the Socialists providing the balance. Kluyev told the press July 25 that if new elections were called, Regions and the Socialists would bloc together and might even include the Communists. Such a bloc in theory could build out from Yanukovych's 2004 Presidential showing, which surpassed Regions' March 26 electoral results by a full ten percent.

¶15. (C) Yushchenko/OU's dilemma over new elections is that their popular support has continued to plummet after OU's dismal third place showing in the March 26 elections. A significant number of Ukrainians place primary blame for the collapse of the Orange Coalition on Yushchenko's indecision and refusal to form an orange coalition quickly. New elections risk OU's near total marginalization as a political force and likely do not provide enough time for Lutsenko to jump start the alternative political project he described to Ambassador July 24.

¶16. (C) While Tymoshenko has publicly called for a union of all national patriotic forces to contest a new election, she has notably remained silent about the specifics of possible cooperation with OU. It is clear that she would expect to set the terms and head the union as the politician currently leading the counter charge against the Regions-Socialist-Communist majority. Indeed, in the current standoff and street politics maneuvering, the total absence of any orange/OU presence is striking. New elections would likely accelerate Ukraine's move towards an effective two-party system, with Regions and Tymoshenko the two dominant forces, as they have been on the streets of Kiev since July 7.

#### Scenario 4: Do nothing

¶17. (C) While Yushchenko has a track record of making tough decisions at the very last moment, former Prime Minister Yehkanurov and at least one prominent commentator/businesswoman/politician, Inna Bohoslovska, suggested to the Ambassador that Yushchenko might just not make any decision at all (refs B, E). In such a scenario, as Yekhanurov outlined, Yushchenko might try to convince political forces to allow the traditional August vacation break to pass by as a cooling-off period, pushing off

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resolution of the political impasse until September. However, given the resoluteness of Speaker Moroz and Regions to force a decision in the short term, the do nothing option appears to us to be the least likely outcome. Were

Yushchenko to not act by August 2 or 5, i.e., within 15 days of receiving the Yanukovych nomination, we believe that it would more likely spark a constitutional crisis, including a possible attempt by the Rada to take matters into its own hands, such as seating a PM and government directly (refs A, D).

¶18. (U) Visit Embassy Kiev's classified website at:  
[www.state.sgov.gov/p/eur/kyiv](http://www.state.sgov.gov/p/eur/kyiv).  
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